

**2**

AO88 (Rev. 12/06) Subpoena in a Civil Case

Issued by the  
**UNITED STATES DISTRICT COURT**

Southern

DISTRICT OF

Florida

**BOSTON SCIENTIFIC CORPORATION and  
 BOSTON SCIENTIFIC SCIMED, INC.**

**SUBPOENA IN A CIVIL CASE**

V.  
**CONOR MEDSYSTEMS, INC.**

Case Number:<sup>1</sup>

**Civil Action No. 05-768 (SLR)  
 District of Delaware**

**TO: Cordis Corporation  
 14201 N.W. 60th Avenue  
 Miami Lakes, FL 33014**

- ☐ YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

- ☒ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

**Marriott Harbor Beach — 3030 Holiday Drive, Fort Lauderdale,  
 FL 33316. See Schedule A**

DATE AND TIME

**February 13, 2007 at 10:00am**

- ☐ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

PLACE

DATE AND TIME

- ☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY (FOR PLAINTIFF OR DEFENDANT))

DATE

**February 2, 2007**

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

**Timothy K. Gilman, Kirkland & Ellis LLP, 153 East 53rd Street, New York, NY 10022  
 (212) 446-4800**

(See Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), on next page)

<sup>1</sup> If action is pending in district other than district of issuance, state district under case number.

AO88 (Rev. 12/06) Subpoena in a Civil Case

## PROOF OF SERVICE

DATE

PLACE

SERVED

MANNER OF SERVICE

SERVED ON (PRINT NAME)

TITLE

SERVED BY (PRINT NAME)

## DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on

DATE

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), as amended on December 1, 2006:

## (c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection, copying, testing, or sampling of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection, copying, testing, or sampling may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to producing any or all of the designated materials or inspection of the premises—or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test, or sample the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, copying, testing, or sampling. Such an order to compel shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection, copying, testing, or sampling commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held;

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject

to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

## (d) DUTIES IN RESPONDING TO SUBPOENA.

(1) (A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) (A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial-preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, any party that received the information of the claim and the basis for it. After being notified, any party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

(e) CONTEMPT. Failure of any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports to require a nonparty to attend or produce at a place not within the limits provided by clause (ii) of subparagraph (c)(3)(A).

**SCHEDULE A**

**TOPICS OF EXAMINATION**

**TOPIC NO. 1:**

The design history of the FDA-approved Bx Velocity stent, including all design iterations and prototypes.

**TOPIC NO. 2:**

The performance and attributes of the Bx Velocity stent design iterations and prototypes.

**TOPIC NO. 3:**

The performance and attributes of the FDA-approved Bx Velocity stent and how they compare to the performance and attributes of any Bx Velocity design iteration or prototype.

**TOPIC NO. 4:**

Cordis' decision to seek to commercialize the design of the Bx Velocity stent that was later approved by the FDA, including the reasons for Cordis' decision.

**TOPIC NO. 5:**

The performance and attributes of the BX stent and how they compare to the performance and attributes of the FDA-approved Bx Velocity stent.

**TOPIC NO. 6:**

Cordis' decision not to seek to commercialize the BX stent, including the reason for Cordis' decision.

**TOPIC NO. 7:**

The authenticity of the documents attached hereto as Exhibit A and whether they were kept in the ordinary course of business.

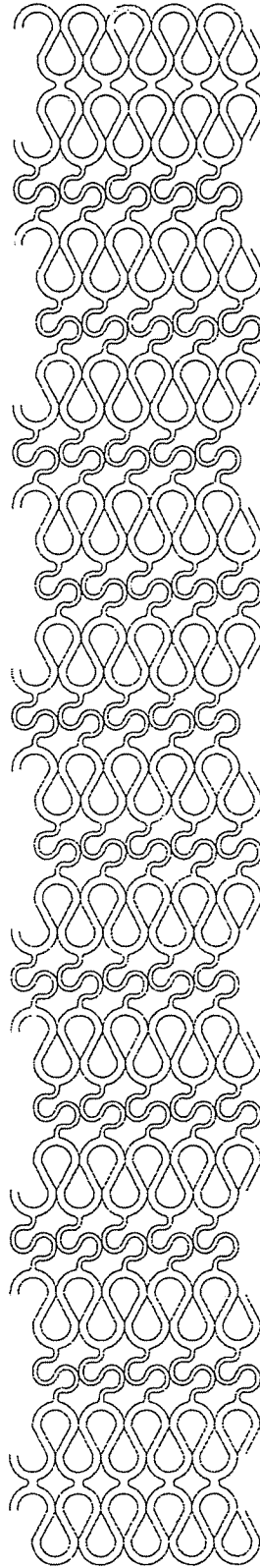
**DEFINITIONS**

1. As used herein, "Cordis" shall mean Cordis Corporation and all of its corporate parents, corporate predecessors and past or present subsidiaries, affiliates, divisions, departments, officers, directors, principals, agents and employees.
2. As used herein, "Bx Velocity stent" shall mean any stent made, used, sold, offered for sale, or imported into the United States by Cordis in which the words "Bx Velocity" constitute all or part of the trademark or name, including any commercial, developmental, working or non-working model, or any prototype of any of the foregoing.
3. As used herein, "BX stent" shall mean the stent designed by Isostent and described in, for example, Chapter 21 of *The Handbook of Coronary Stents* (2d edition 1998), including any commercial, developmental, working or non-working model, or any prototype of any of the foregoing.
4. As used herein, "include" and "including" shall be construed to mean "without limitation," so as to acquire the broadest meaning possible.

## EXHIBIT A

REVISIONS  
ZONE REV DESCRIPTION DATE APPROVED

THIS DRAWING REFLECTS DIMENSIONS AFTER ELECTROPOLISHING



LENGTH=27mm

0.226" (circumference)  
0.72 mil O.D.

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**CONFIDENTIAL**

DRAWN BY: [blank]  
DATE: April 23, 1998

CHECKED BY: [blank]  
DATE: [blank]

APPROVED BY: [blank]  
DATE: [blank]

SIZE: A  
SCALE: XXX

FILE NAME: [blank]  
PART NUMBER: [blank]

REV: A  
SHEET: [blank]



**HIGHLY CONFIDENTIAL**  
**BSC-C 0168824**



REVOLUTIONS		DESCRIPTION	
ZONE	LET	DATE	BY

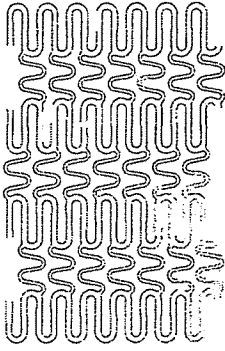

DETAIL 1 Strut and articulation widths

LEFT END INT RIGHT END

DETAIL 2 FLAT LAYOUT

Notes

- Dimensions noted are as finished
- DD as finished = 0.03 in
- Indicated from .051 in ± .001 WT (16L)
- Stainless steel tubing (refer to drawing #)
- Critical dimensions have mean constraints

Detail 1 notes:

- Longitudinal pattern spacing
- LEFT END segment
- INT segment
- RIGHT END segment

Detail 2 notes:

- Pattern lines indicate width of other dimensions and/or tolerancing. Pattern line section denoted by INT defines the center of the stent.

5 pattern displayed in Detail 2 represents 8mm stent with x-1 in segments  
This pattern repeats 7 times around the circumference of the stent

	A	B	C	D	E	F	G	H	I	J	K	M	N
X													
1													
2													

	A	B	C	D	E	F	G	H	I	J	K	M	N
NOMINAL LENGTH													
1													
2													

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GENERAL REQUIREMENTS: UNLESS OTHERWISE SPECIFIED

- << >> DENOTES CRITICAL ELEMENT
- < > DENOTES INSPECTION ELEMENT
- < > DENOTES METRIC DIMENSION
- < > DENOTES MATING PARTS
- < > DENOTES FINISH ON SURFACE
- < > DENOTES ALL BUBBLES & BREAK SHARP EDGES
- < > INDICATES A REVISION LEVEL

DO NOT SCALE DRAWING

TOLERANCES UNLESS OTHERWISE SPECIFIED

XXXX (4 PLACE DEC) ±0.005 (IN) ±0.013 (MM) THREES

XXX (3 PLACE DEC) ±0.005 (IN) ±0.0127 (MM) ANGLES

XX (2 PLACE DEC) ±0.01 (IN) ±0.025 (MM) THIS DRAWING WAS GENERATED USING APT 11/64 = 1/16.4

CLASS 2 FIR

THIS DRAWING WAS GENERATED USING APT 11/64 = 1/16.4

CORDIS A JOHNSON & JOHNSON COMPANY

40 Technology Drive Warren, NJ 07059

REV

DWG NO.

DWG SIZE

SHEET

OF

BSC-C 0168825

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# Stent Parameters

Stent Length: 275 mm  
 Stent Diameter: 10 mm  
 Stent Wall Thickness: 5 mil

5 mil wall thickness

REVISIONS  
 DESCRIPTION  
 DATE  
 APPROVED

APPROVED

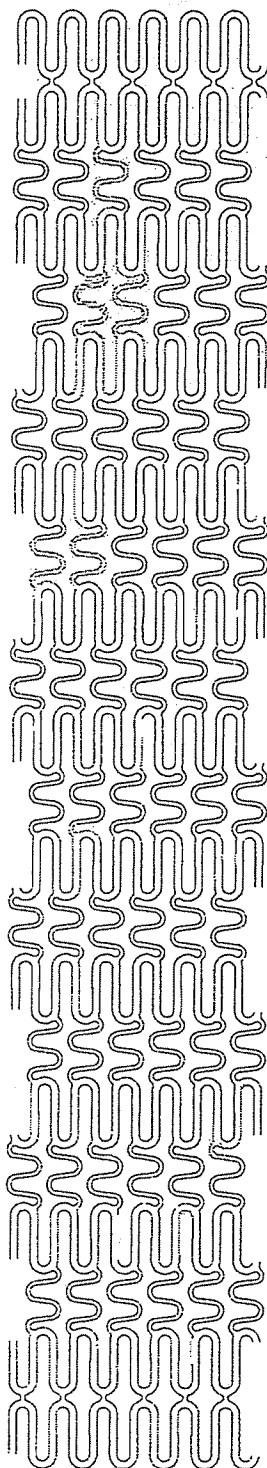
DATE

DESCRIPTION

REV

ZONE

MIL DD (58 MIL DD Tubing)



275 mm long

THIS DRAWING REFLECTS DIMENSIONS AFTER ELECTROPOLISHING

UNLESS OTHERWISE SPECIFIED  
 DIMENSIONS ARE IN INCH  
 AND TOLERANCES ARE

XX ± .01  
 XXX ± .001  
 XXXX ± .0005  
 FRACTION = 1/32  
 ANGULAR = ±1/2°

MATERIAL

04610 x .006 wall 316L VM

FINISH: ELECTROPOLISHED

NEXT ASSY

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DATE

DATE

APPROVED

DATE

NAME

DATE

APPROVED

OMNI6\_27\_A

FILE NAME

SIZE

A

SCALE

XXX

DATE

PART NUMBER

PN XXXXXXXXX

SHEET

REV

A

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BSC-C 0168826

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DRAWN BY:

DATE

7/15/98

BSC-C 0168827

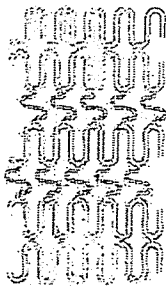
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CONFIDENTIAL

Stent Parameters

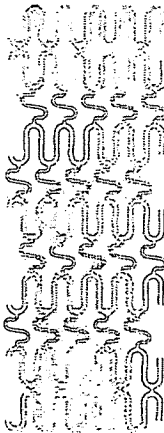
5 mil wall thickness

ZONE REV DESCRIPTION DATE APPROVED

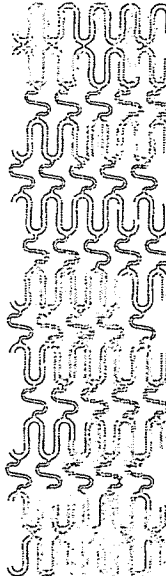
57 mil OD (58 mil OD Tubing)



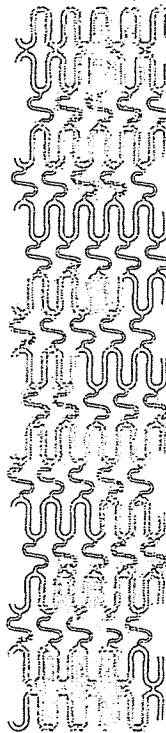
8.4 mm long



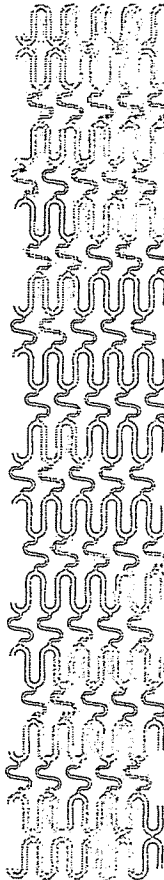
13 mm long



176 mm long



221 mm long



26.7 mm long

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UNLESS OTHERWISE SPECIFIED, DIMENSIONS ARE IN INCHES AND TOLERANCES ARE:  
XX ± .001  
XX ± .005  
FRACTION = 1/32  
ANGULAR = 1/2°

MOULDING X .006 WALL 316L VM  
FINISH ELECTROPOLISHED  
BXMN1 J FAMILY OF STENTS

DRAWN BY: J. N. FISCHER DATE: 6/15/98  
CHECKED BY: DATE:  
APPROVED BY: DATE:  
DATE APPROVED: DATE:  
NEXT ASST: DATE:  
SUN: XXX DATE: PROJECT: A

REV A

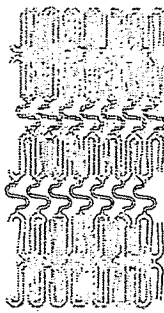


BSC-C 0168829

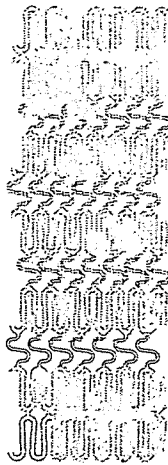
HIGHLY  
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Stent Parameters

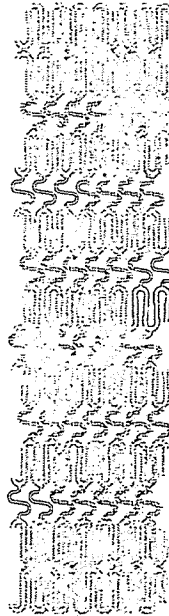
5 mil wall thickness



91 mm long



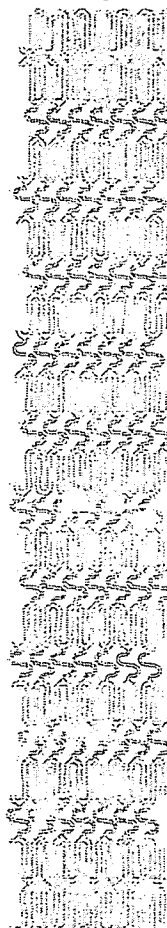
138 mm long



186 mm long



232 mm long



281 mm Long

57 mil OD (58 mil OD Tubing)

THIS DRAWING REFLECTS DIMENSIONS AFTER ELECTROPOLISHING

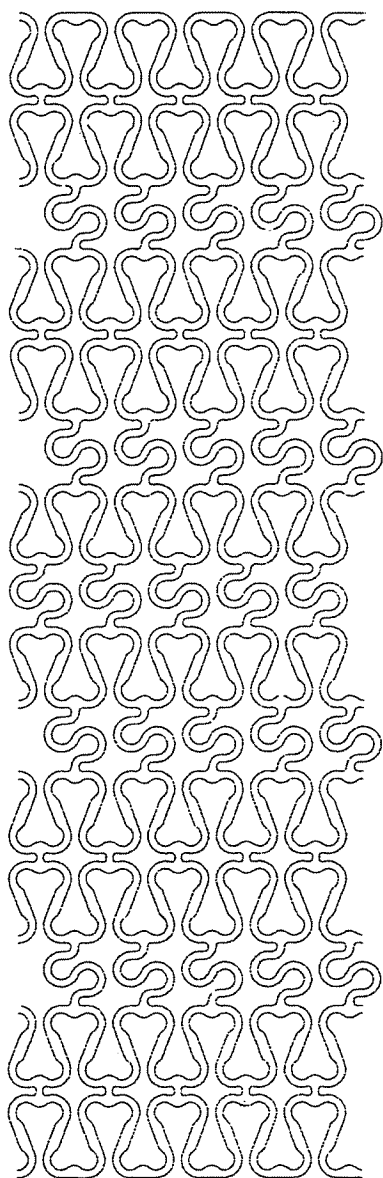
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XX	± .01	XX	± .01	XX	± .01
XXX	± .005	XXX	± .005	XXX	± .005
FRACTION = 1/16"		FRACTION = 1/16"		FRACTION = 1/16"	
MATERIAL: 04610 X .006 WALL 316L VM		MATERIAL: 04610 X .006 WALL 316L VM		MATERIAL: 04610 X .006 WALL 316L VM	
APPROVED BY: _____		APPROVED BY: _____		APPROVED BY: _____	
DATE: _____		DATE: _____		DATE: _____	
CHECKED BY: _____		CHECKED BY: _____		CHECKED BY: _____	
DATE: 6/15/06		DATE: 6/15/06		DATE: 6/15/06	
NEXT ASSY		NEXT ASSY		NEXT ASSY	
SCALE: 1:1		SCALE: 1:1		SCALE: 1:1	
PART NAME: BX MIDL G FAMILY OF STENTS		PART NAME: BX MIDL G FAMILY OF STENTS		PART NAME: BX MIDL G FAMILY OF STENTS	
REV: A		REV: A		REV: A	
PN: 0000000000		PN: 0000000000		PN: 0000000000	
SHEET		SHEET		SHEET	

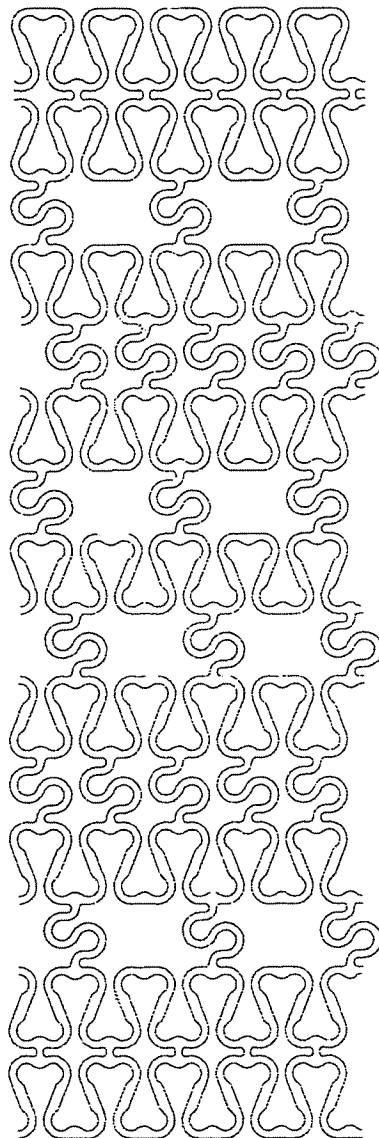




CURRENT BX



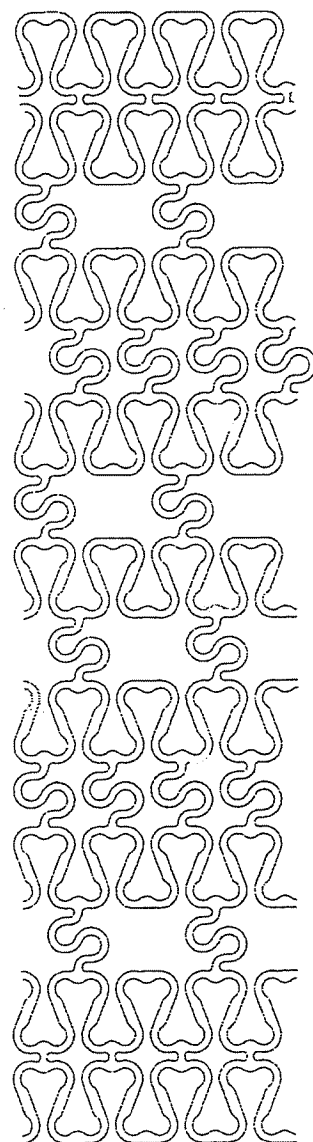
BX ULTRAFLEX5



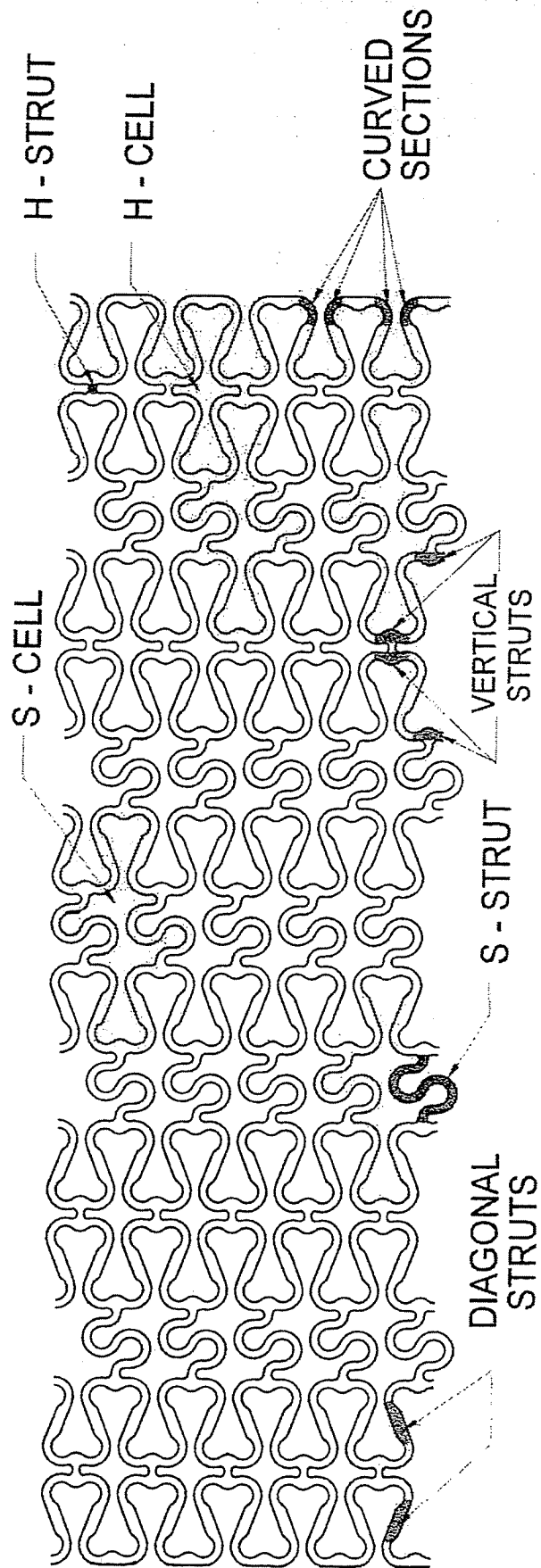
BX ULTRAFLEX4

BSC-C 0168831

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# PRE - DEPLOYED BX STENT (15 mm Long)

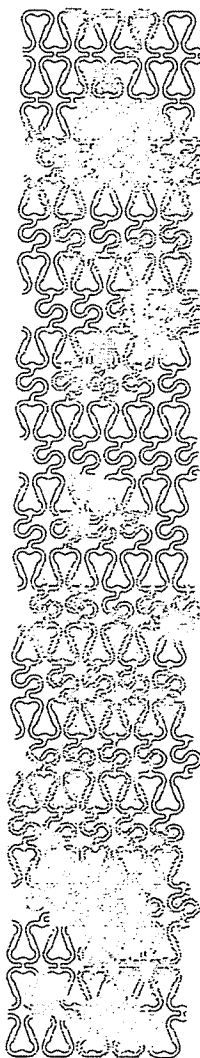


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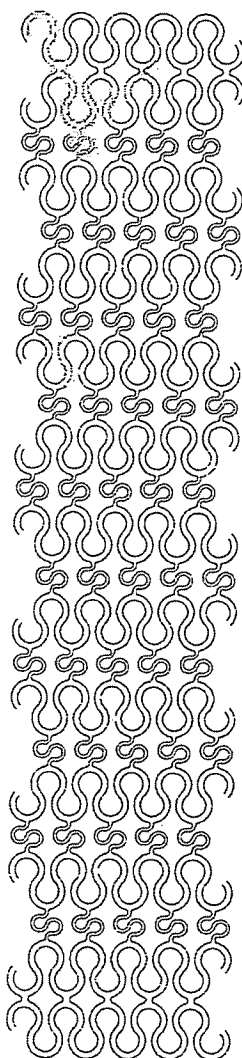
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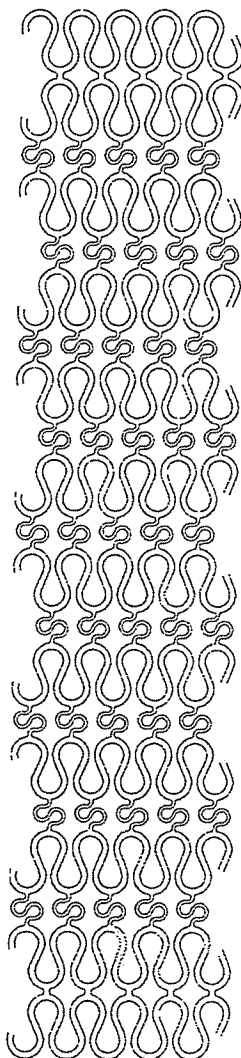
BX-MB25



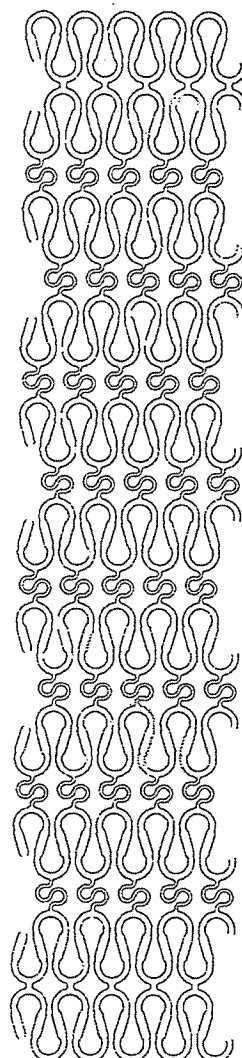
BX OMNI\_C



BX OMNI\_B



BX OMNI\_A



BSC-C 0168833

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ZONE	REV	DESCRIPTION	REVISIONS	DATE	APPROVED

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 XX ± 0.01  
 XXX ± 0.001  
 XXXX ± 0.0005  
 FRACTION ± 1/32  
 DECIMAL ± 1/2"

71 Riverlawn Drive  
 Fair Haven, NJ 07704  
 TEL. (732) 758-9574

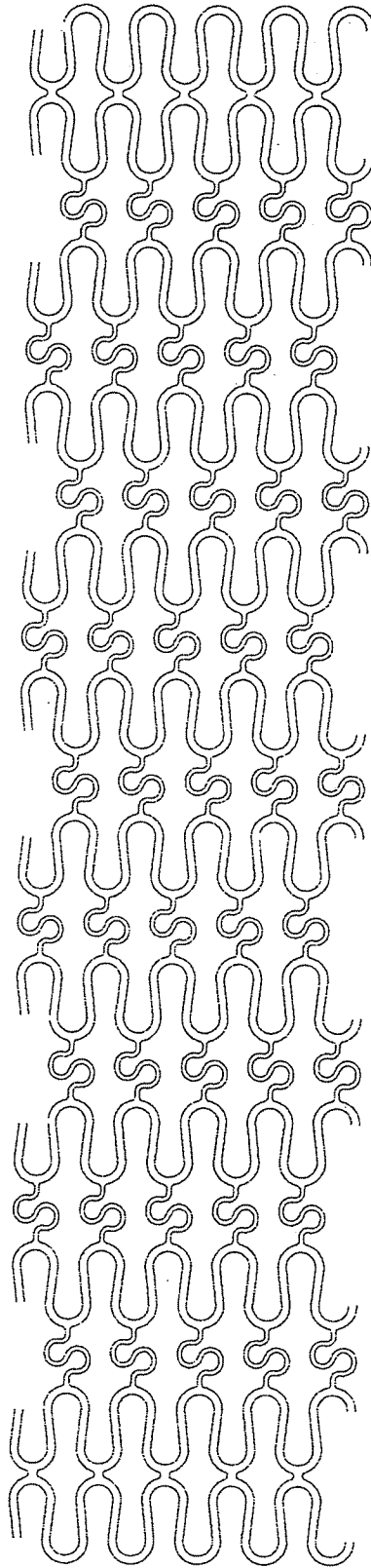
**C25-12X5\_B**

DRAWN BY: D. R. Fischell  
 DATE: March 16, 1998  
 CHECKED BY: [Signature]  
 DATE: [Blank]  
 APPROVED BY: [Signature]  
 DATE: [Blank]  
 NAME: [Blank]  
 FINISH: ELECTROPOLISHED  
 MATERIAL: 316L VM SS, 0.065" OD/0.006" TW  
 SCALE: A  
 FILE NAME: bxomni\_b.skd  
 PART NUMBER: PN XXXXXXXXX  
 REV: A

March 16, 1998  
 SHEET  
**HIGHLY CONFIDENTIAL**  
 BSC-C 0168834



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Length = 271mm

0.226" Circumference  
(72 mil O.D.)

REVISIONS		DATE	APPROVED
ZONE	REV	DESCRIPTION	

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 .XX = ±0.1  
 .XXX = ±0.01  
 .XXXX = ±0.005  
 FRACTION = 1/32  
 ANGULAR = ±1/2°

MATERIAL: 316L VM SS. 0.074" THK. 0.007" IN.

FINISH: ELECTROPOLISHED

CHECKED BY:

DATE: April 23, 1998

DATE:

DATE: April 23, 1998

APPROVED BY:

DATE: DATE

SIZE: A

FILE NAME:

SCALE: XXX

NEXT ASSY:

DATE: DATE

PART NUMBER:

PN: XXXXXXXXX

DATE:

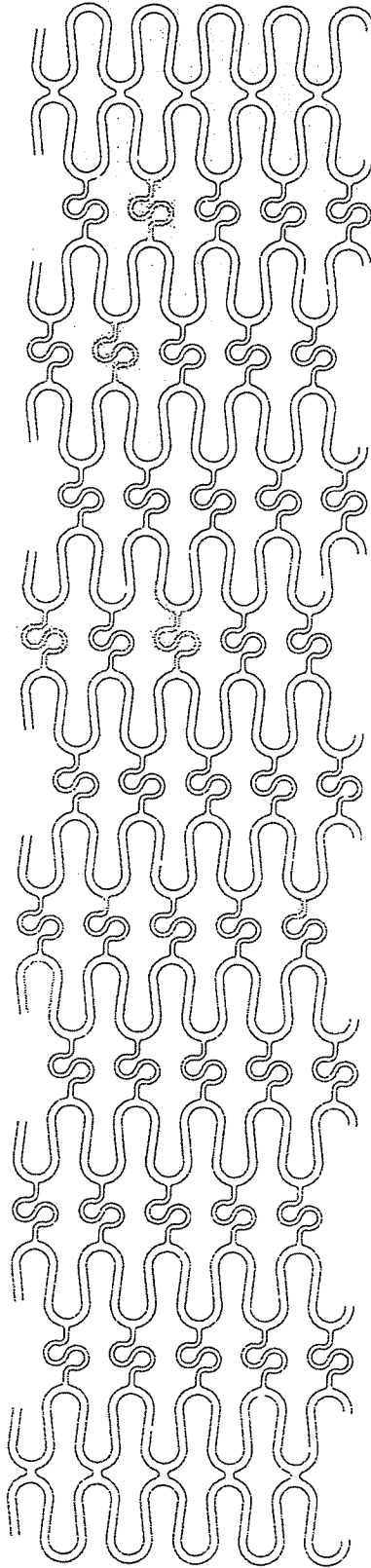
SHEET:

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BSC-C-0168836

CONFIDENTIAL

THIS DRAWING REFLECTS DIMENSIONS AFTER ELECTROPOLISHING

0.226" Circumference  
(72 mil ID)

REVISIONS

DESCRIPTION

ZONE REV

DATE

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CHECKED BY

D K GISHEN  
DATE

DATE

April 22, 1998

APPROVED BY

NAME  
DATE

DATE  
DATE

UNLESS OTHERWISE SPECIFIED  
DIMENSIONS ARE IN INCH  
AND TOLERANCES ARE  
XX = ±0.01  
XXX = ±0.005  
FRACTION = 1/32  
ANGULAR = ±1/2°

MATERIAL  
316L VM SS. 0074/00/0007/1W

FINISH

ELECTROPOLISHED

NEXT ASSY

SIZE FILE NAME

A

PART NUMBER

PN xxxxxxxxxx

SCALE XXX

DATE

SHEET

REV

A

F. SCHLELL  
BIO MEDICAL

11 Riverlawn Drive  
Fair Haven NJ 07704  
TEL (732) 758-9574

C27-12x5\_H

**HIGHLY  
CONFIDENTIAL**

BSC-C 0168837



APPROVED

[illegible]

Length 271mm

THIS DRAWING REFLECTS DIMENSIONS AFTER ELECTROPOLISHING

0226" Circumference (72 mil OD)

UNLESS OTHERWISE SPECIFIED  
DIMENSIONS ARE IN INCH  
AND TOLERANCES ARE

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7. Page No. Date  
Page No. NJ 11/04  
Date 12/01/04

027-13X5

316L VM SS 0.074'OD/0.0017"TW

DRAWN BY	CHECKED BY	APPROVED BY	NAME
J R Fickel			

SIZE	FILE NAME	PART NUMBER	PN	xxxxxxx.xx	REV	A.
A						

NEXT ASSY

DATE:

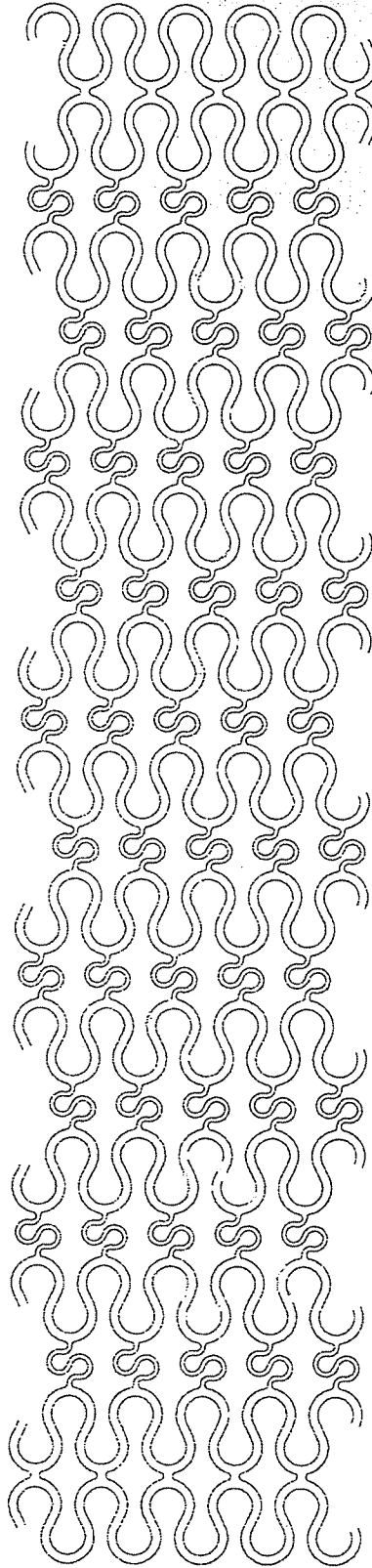
# MEET

~~BSC-C-0168838~~

**HIGHLY  
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THIS DRAWING REFLECTS DIMENSIONS AFTER ELECTROPOLISHING



Length = 2/1mm

0.226" Circumference  
(72 MIL DD)

REVISIONS		APPROVED	
ZONE	REV	DESCRIPTION	DATE

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DRAWN BY: G. F. G. H. J.  
DATE: April 20, 1998

CHECKED BY: NAME: DATE: APPROVED

UNLESS OTHERWISE SPECIFIED DIMENSIONS ARE IN INCH AND TOLERANCES ARE:  
XX = ±.01  
XXX = ±.001  
XXXX = ±.0005  
FRACTION = 1/32  
ANGULAR = 1/2°

MATERIAL: 316L VM SS, 0.074" OD/0.002" W  
FINISH: ELECTROPOLISHED

SIZE: A  
FILE NAME: C25f.dxf

REV: A

PART NUMBER: PN XXX-XXXXXX

DATE

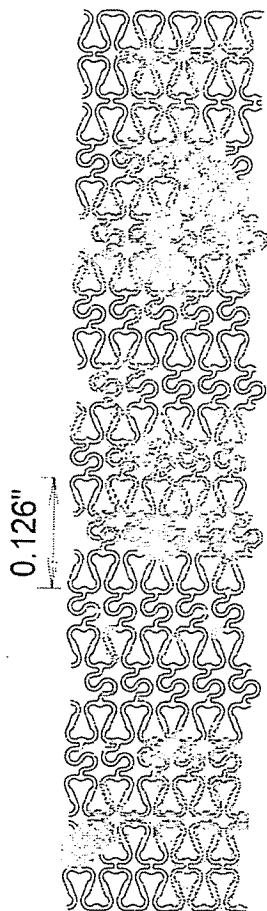
SCALE: XXX

NEXT ASSY

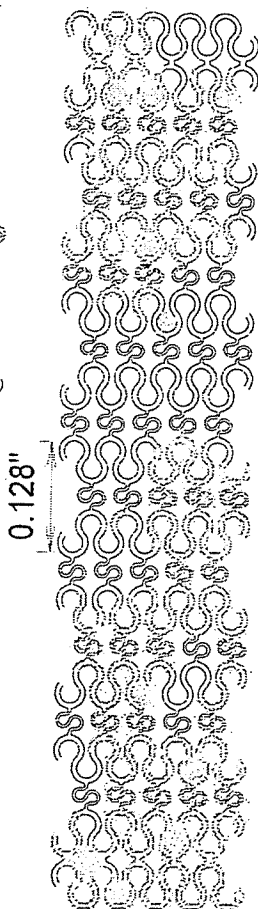
SHEET

**HIGHLY CONFIDENTIAL**  
BSC-C 0168840

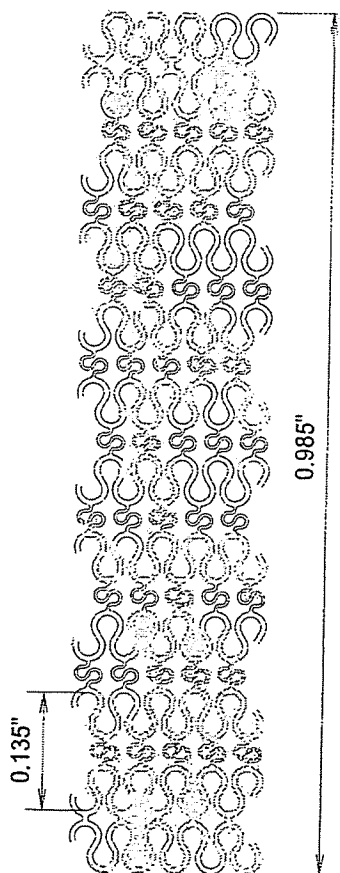




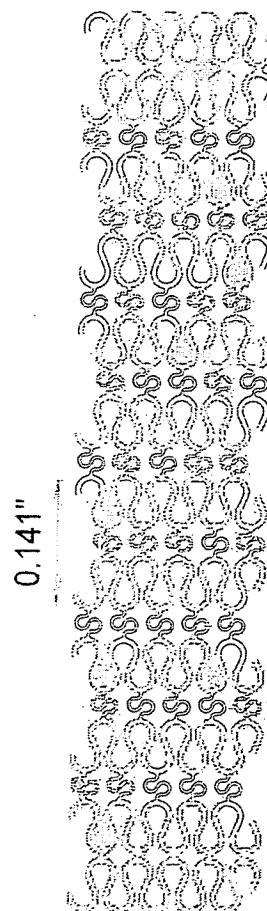
BX MB25



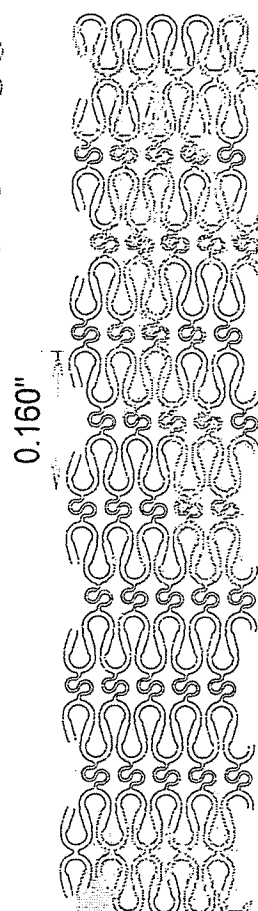
BX OMNI\_C



BX OMNI\_D



BX OMNI\_B



BX OMNI\_A

BSC-C 0168841

HIGHLY  
CONFIDENTIAL

ZONE	REV	DESCRIPTION	DATE	APPROVED
REVISIONS				

A decorative border consisting of a repeating pattern of stylized, interlocking loops and curves, resembling a continuous chain or a series of connected 'S' shapes. The pattern is composed of thin, black lines on a white background, creating a rhythmic and geometric design.

Length = 271mm

THIS DRAWING REFLECTS DIMENSIONS AFTER ELECTROPOLISHING

THIS DRAWING AND THE INFORMATION  
HEREIN ARE THE PROPERTY  
OF GEORGE A. HART, JR. AND ARE TO BE  
KEPT IN CONFIDENCE.  
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OR USE FOR ANY PURPOSE NOT  
EXPRESSLY AUTHORIZED IN WRITING  
BY GEORGE A. HART, JR. IS PROHIBITED.

UNLESS OTHERWISE SPECIFIED  
DIMENSIONS ARE IN INCH  
AND TOLERANCES ARE

[illegible]

# THE MEDICAL

For review, please  
 For players NO 0774  
 TEL 0732 758-9574

AND EXERCISE

APPROVED BY: \_\_\_\_\_  
NAME: \_\_\_\_\_

316L VM SS 0074\*00/0.00  
FINISH: ELECTROPO. LISHED

FILE NAME	SIZE
	A

PART NUMBER:

REV A

DATE: April 22, 1998

NEXT ASSY

DATE:

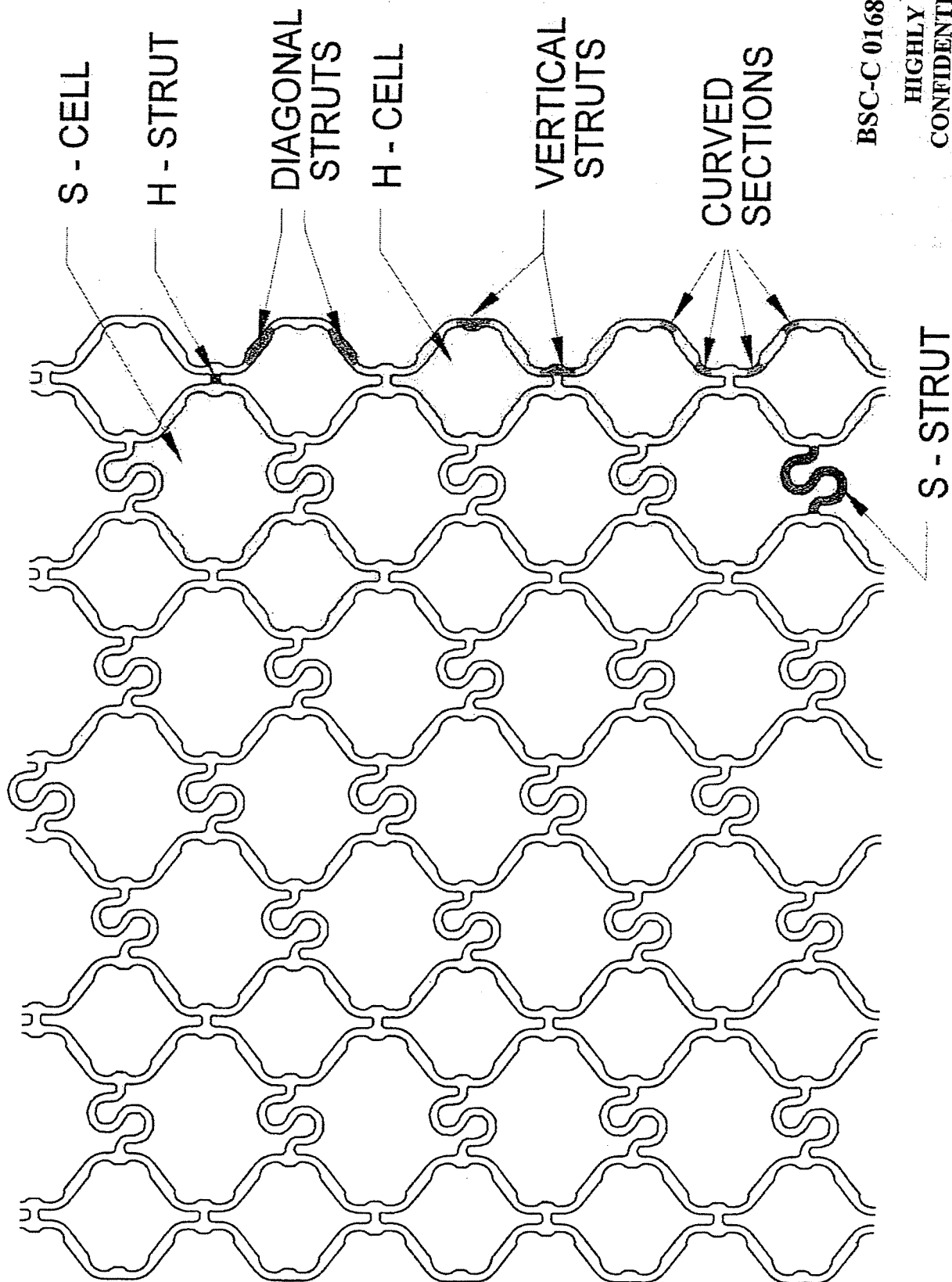
LEADS

BSC-C-0168842

**HIGHLY  
CONFIDENTIAL**

# DEPLOYED BX STENT

(15 mm Long)



BSC-C 0168843

HIGHLY  
CONFIDENTIAL

## Stent Parameters

Stent Wall Thickness = .005 mil  
Stent Length = 181 mm

## REVISIONS

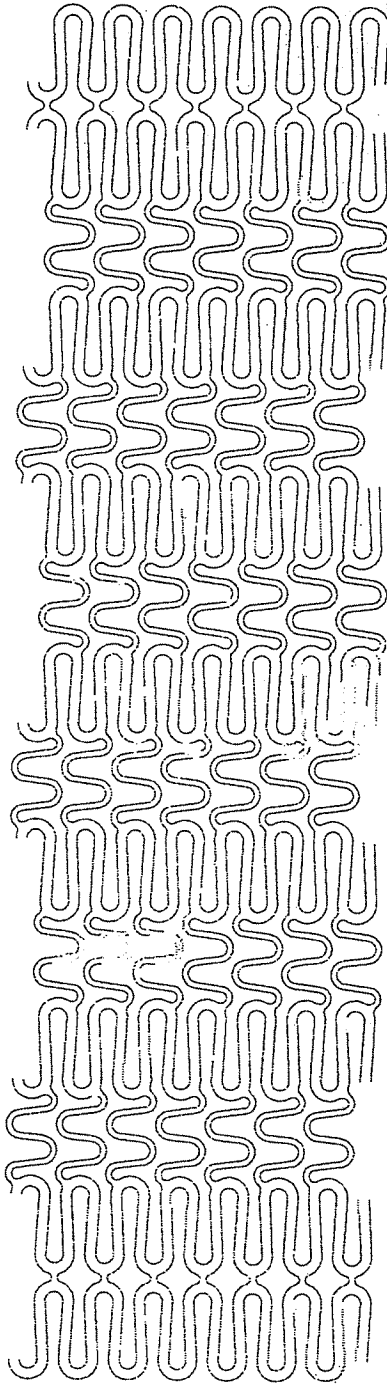
## DESCRIPTION

## ZONE REV

## DATE

## APPROVED

5 mil wall thickness



181 mm long

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UNLESS OTHERWISE SPECIFIED DIMENSIONS ARE IN INCH AND TOLERANCES ARE

XX ± .01  
XXX ± .001  
XXXX ± .0005  
FRACTION ± 1/32  
ANGULAR ± 1/2°

## MATERIAL

.0461D x .006 wall 316L VM

CHECKED BY DATE

APPROVED BY DATE

FINISH ELECTROPOLISHED

SIZE FILE NAME

A #112715.sld

NEXT ASSY

SCALE

XXX

DATE

PART NUMBER

PN xxxxxxxxxx

SHEET

REV

A

A

DRAWN BY

DATE

7/15/98

MIDI 118

7 River St. Tring  
Haverhill MA 01774  
732 758-9774

HIGHLY  
CONFIDENTIAL

BSC-C 0168844

3

AO88 (Rev. 12/06) Subpoena in a Civil Case

Issued by the  
**UNITED STATES DISTRICT COURT**

SOUTHERN

DISTRICT OF

NEW YORK

BOSTON SCIENTIFIC CORPORATION, et al.,

**SUBPOENA IN A CIVIL CASE**

V.

CONOR MEDSYSTEMS, INC.

Case Number:<sup>1</sup> 05-768-SLR  
United States District Court for  
the District of Delaware

TO: Brian G. Firth, M.D., Ph.D.  
Cordis Corporation  
7 Powderhorn Drive  
Warren, NJ 07059

- ☐ YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

- ☒ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME
Kirkland & Ellis LLP, 153 East 53rd Street, New York, NY 10022	February 13, 2007 - 9:30 am


- ☐ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

PLACE	DATE AND TIME
-------	---------------

- ☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME
----------	---------------

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)	DATE
 Attorney for Plaintiff	02/06/07
ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER	
Jeanne M. Heffernan, Esq. Kirkland & Ellis, 153 East 53rd Street, New York, NY 10022 / (212) 446-4800	

(See Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), on next page)

<sup>1</sup> If action is pending in district other than district of issuance, state district under case number.



AO88 (Rev. 12/06) Subpoena in a Civil Case

## PROOF OF SERVICE

DATE	PLACE
SERVED	
SERVED ON (PRINT NAME)	MANNER OF SERVICE
SERVED BY (PRINT NAME)	TITLE

## DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on

DATE

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), as amended on December 1, 2006:

## (c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection, copying, testing, or sampling of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection, copying, testing, or sampling may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to producing any or all of the designated materials or inspection of the premises — or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test, or sample the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, copying, testing, or sampling. Such an order to compel shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection, copying, testing, or sampling commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;  
(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held;  
(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or  
(iv) subjects a person to undue burden.

## (B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or  
(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or  
(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject

to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

## (d) DUTIES IN RESPONDING TO SUBPOENA.

(1) (A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) (A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial-preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

(e) CONTEMPT. Failure of any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports to require a nonparty to attend or produce at a place not within the limits provided by clause (ii) of subparagraph (c)(3)(A).

**4**



AO 88 (Rev. 1/94) Subpoena in a Civil Case

**Issued by the  
UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF NEW JERSEY**

BOSTON SCIENTIFIC CORPORATION  
And BOSTON SCIENTIFIC SCIMED, INC.

**SUBPOENA IN A CIVIL CASE**

**V.**

CASE NUMBER: <sup>1</sup> 05-768-SLR  
United States District Court  
for the District of Delaware

CONOR MEDSYSTEMS, INC.

TO: **David Christopher Majercak**  
**519 Madison Drive**  
**Stewartsville, NJ 08886-2632**

☐ YOU ARE COMMANDED to appear in the United States District Court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

☒ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

DATE AND TIME

**Kirkland & Ellis LLP, 153 East 53<sup>rd</sup> Street, New York, NY 10022**

February 14, 2007  
9:00 a.m.

☐ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

PLACE

DATE AND TIME

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure. 30(b)(6).

ISSUING OFFICER SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

DATE  
February 2, 2007

Attorney for Plaintiffs

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

Adam W. Poff, Esquire, Young Conaway Stargatt & Taylor, LLP, The Brandywine Building, 17<sup>th</sup> Floor, PO Box 391, Wilmington, DE 19899-0391

(See Rule 45, Federal Rules of Civil Procedure, Parts C & D on Reverse)

<sup>1</sup> If action is pending in district other than district of issuance, state district under case number.

**PROOF OF SERVICE**

DATE	PLACE
SERVED	
SERVED ON (PRINT NAME)	MANNER OF SERVICE
SERVED BY (PRINT NAME)	TITLE

**DECLARATION OF SERVER**

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on \_\_\_\_\_

ATE

SIGNATURE OF SERVER

ADDRESS OF SERVER

**Rule 45, Federal Rules of Civil Procedure, Parts C & D:****(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.**

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

- (i) fails to allow reasonable time for compliance;
- (ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that

person resides, is employed or regularly transacts business person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iv) subjects a person to undue burden.

**(B) If a subpoena**

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

**(d) DUTIES IN RESPONDING TO SUBPOENA.**

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.